

**§ 58-51-17. Portability for accident and health insurance.**

(a) Rules Relating to Crediting Previous Coverage.

- (1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
  - a. A group health plan as defined in G.S. 58-68-25(a)(4b).
  - b. Health insurance coverage without regard to whether the coverage is offered in the group market, the individual market, or otherwise.
  - c. Part A or part B of title XVIII of the Social Security Act.
  - d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
  - e. Chapter 55 of title 10, United States Code.
  - f. A medical care program of the Indian Health Service or of a tribal organization.
  - g. A State health benefits risk pool.
  - h. A health plan offered under chapter 89 of title 5, United States Code.
  - i. A public health plan (as defined in federal regulations).
  - j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
  - k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits as described in G.S. 58-68-25(b). However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section.

(2) Not counting periods before significant breaks in coverage.

- a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under an individual health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
- b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (b)(3) of this section, any period that an individual is in a waiting period, as defined in G.S. 58-68-30(b)(4)c., for any coverage under an individual health insurance plan shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.
- c. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period shall not be considered when determining whether a significant break in coverage has occurred.

(3) Method of crediting coverage. – An individual health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(4) Establishment of period. – Periods of creditable coverage for an individual shall be established through presentation of certifications described in

subsection (c) of this section or in another manner that is specified in regulations.

(5) Determination of creditable coverage.

- a. Determination within reasonable time. – If an individual health insurer receives creditable coverage information under subsection (c) of this section, the insurer shall, within a reasonable time following receipt of the information, make a determination regarding the amount of the individual's creditable coverage and the length of any exclusion that remains. Whether this determination is made within a reasonable time depends on the relevant facts and circumstances. Relevant facts and circumstances include whether a plan's application of a preexisting condition exclusion would prevent an individual from having access to urgent medical care.
- b. No time limit on presenting evidence of creditable coverage. – An individual health insurer shall not impose any limit on the amount of time that an individual has to present a certificate or other evidence of creditable coverage.

(b) Exceptions.

- (1) Exclusion not applicable to certain newborns. – Subject to subdivision (3) of this subsection, an individual health insurer shall not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the individual's date of birth, is covered under creditable coverage.
- (2) Exclusion not applicable to certain adopted children. – Subject to subdivision (3) of this subsection, an individual health insurer shall not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.
- (3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(c) Certifications and Disclosure of Coverage.

- (1) In general. – An individual health insurer shall provide the certification described in this subdivision (i) at the time an individual ceases to be covered under the plan, and (ii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) of this subdivision, whichever is later.
- (2) Certification. – The certification described in this subdivision is a written certification of (i) the period of creditable coverage of the individual under the plan and (ii) any waiting period and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.

(d) Applicability. – This section applies to all health benefit plans of individual health insurance coverage delivered or issued for delivery in this State, including certificates issued under group policies that are delivered or issued for delivery in this State. This section also

applies to certificates issued under a policy issued and delivered to a trust or association outside this State and covering persons residing in this State. (2007-298, s. 2.2; 2009-382, ss. 1, 9, 10.)